

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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ERIC REASON, an individual;
STEPHANIE BASS, an individual;
RASHEED REASON, individually and
as Co-Successor-in-Interest to
Decedent ERIC REASON II; TYRIQUE
REASON, individually and as Co-
Successor-in-Interest to
Decedent ERIC REASON II; K.R.,
individually and as Co-
Successor-in-Interest to
Decedent ERIC REASON II, by and
through his Guardian Ad litem
LATISHA PARKER; P.R.,
individually and as Co-
Successor-in-Interest to
Decedent ERIC REASON II, by and
through his Guardian Ad Litem
LATISHA PARKER; N.M.,
individually and as Co-
Successor-in-Interest to
Decedent ERIC REASON II, by and
through his Guardian Ad Litem
NIA MILLS; E.L.R., individually
and as Co-Successor-in-Interest
to Decedent ERIC REASON II, by
and through his Guardian Ad
Litem SHAWNTAY DAVIS; I.R.V.,
individually and as Co-
Successor-in-Interest to
Decedent ERIC REASON II, by and
through his Guardian Ad Litem
JULIA VELASQUEZ;

No. 20-cv-01900-WBS-EFB

MEMORANDUM AND ORDER RE:
DEFENDANT CITY OF VALLEJO AND
VALLEJO CHIEF OF POLICE
SHAWNY WILLIAMS' MOTION TO
DISMISS, DEFENDANT CITY OF
RICHMOND'S MOTION TO DISMISS,
AND DEFENDANT RICHMOND CHIEF
OF POLICE BISA FRENCH'S
MOTION TO DISMISS

1
2 Plaintiffs,

3 v.

4 CITY OF RICHMOND, a municipal
5 corporation; CITY OF VALLEJO, a
6 municipal corporation; the
7 ESTATE OF VIRGIL THOMAS,
8 individually and in his capacity
9 as Police Sergeant for the CITY
10 OF RICHMOND; SHAWNY WILLIAMS, in
11 his individual capacity as Chief
12 of Police for the CITY OF
13 VALLEJO; BISA FRENCH, in her
14 individual capacity as Chief of
Police for the CITY OF RICHMOND;
DOES 1-25, inclusive, in their
individual capacities as police
officers for the CITY OF
RICHMOND and/or CITY OF VALLEJO,
and DOES 26-50, inclusive,
individually and in their
supervisory capacity as
employees for the Richmond
Police Department and/or Vallejo
Police Department

15 Defendants.

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18 Plaintiffs Eric Reason, Stephanie Bass, Rasheed Reason,
19 Tyrique Reason, and the minor children of the decedent Eric
20 Reason II ("plaintiffs") brought this action against the City of
21 Vallejo ("Vallejo"), the City of Vallejo's Chief of Police Shawny
22 Williams, the City of Richmond ("Richmond"), the City of
23 Richmond's Chief of Police Bisa French, the Estate of Richmond
24 Police Sergeant Virgil Thomas, and DOES 1-50 seeking damages
25 against defendants for violation of their civil rights under 42
26 U.S.C. § 1983, conspiracy to violate their civil rights under 42
27 U.S.C. § 1985, wrongful death, negligence, violation of
28 California Civil Code § 52.1, and battery.

1 Before the court are the City of Vallejo and the City
2 of Vallejo Chief of Police Shawny Williams' Motion to Dismiss,
3 (Docket No. 6), the City of Richmond's Motion to Dismiss (Docket
4 No. 8), and the City of Richmond Chief of Police Bisa French's
5 Motion to Dismiss (Docket No. 9.)

6 I. Factual and Procedural Background

7 Plaintiffs allege that on November 10, 2019, defendant
8 Richmond Police Department Sergeant Virgil Thomas and decedent
9 Eric Reason II became embroiled in a heated verbal confrontation
10 over a parking spot in the city of Vallejo, California. (Compl.
11 at ¶ 1) (Docket No. 1.) Sergeant Thomas was on administrative
12 leave at the time of this incident. (Id. at ¶ 47.) Mr. Reason
13 walked back towards his van after exchanging words with Sergeant
14 Thomas. (See id. at ¶ 1) Sergeant Thomas then raised his gun
15 and fired at Mr. Reason and shot him in the back of the head.
16 (Id.)

17 Sergeant Thomas then contacted police dispatch and
18 identified himself as a Richmond Police Department Sergeant.
19 (See Compl. at ¶ 2.) Vallejo Police Officers responded to the
20 scene and initiated the Solano County Officer Involved Shooting
21 Protocol. (See id.) The Vallejo Police Department began
22 securing the crime scene and placed crime scene tape around the
23 vicinity of the shooting. (Id.) During this time, Vallejo
24 Police Officers allowed Sergeant Thomas to remain on scene
25 without being sequestered or cordoned off from critical items of
26 evidence. (Id.) Vallejo Police permitted Sergeant Thomas to
27 "disturb the crime scene and take photographs of Mr. Reason's
28 dead body in full view of the Vallejo Police Department Officers

1 and members of the Reason family who were gathering outside of
2 the crime scene tape.” (Id.) Vallejo police officers uninvolved
3 in the investigation viewed Mr. Reason’s body under a tarp. (Id.
4 at ¶ 40.)

5 In an “effort to conceal the criminal actions of
6 Sergeant Thomas and quell public outrage, the Vallejo Police
7 Department issued a press release which sought to justify the
8 shooting and overtly failed to accurately describe the true
9 circumstances of the shooting.” (Id. at ¶ 3.) In the aftermath
10 of the shooting, the Reason family initiated a complaint with
11 Chief of Police Shawny Williams related to the disturbance of the
12 crime scene and Sergeant Thomas photographing Mr. Reason’s
13 remains. (Id. at ¶ 4.) To date, the City has not formally
14 responded to the Reason family’s complaint. (See id.)

15 II. Discussion

16 Federal Rule of Civil Procedure 12(b)(6) allows for
17 dismissal when the plaintiff’s complaint fails to state a claim
18 upon which relief can be granted. See Fed. R. Civ. P. 12(b)(6).
19 The inquiry before the court is whether, accepting the
20 allegations in the complaint as true and drawing all reasonable
21 inferences in the plaintiff’s favor, the complaint has stated “a
22 claim to relief that is plausible on its face.” Bell Atl. Corp.
23 v. Twombly, 550 U.S. 544, 570 (2007). “The plausibility standard
24 is not akin to a ‘probability requirement,’ but it asks for more
25 than a sheer possibility that a defendant has acted unlawfully.”
26 Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). “Threadbare
27 recitals of the elements of a cause of action, supported by mere
28 conclusory statements, do not suffice.” Id. Although legal

1 conclusions "can provide the framework of a complaint, they must
2 be supported by factual allegations." Id. at 679.

3 Plaintiffs allege that the City of Vallejo, City of
4 Richmond, and their respective Chiefs of Police Shawny Williams
5 and Bisa French are liable under Monell v. Department of Social
6 Services of the City of New York, 436 U.S. 658, 694 (1978), for:
7 (1) having an unconstitutional custom or policy, (2) ratifying
8 the decisions of the officers who caused the constitutional
9 violation, and (3) failing to adequately train the police
10 officers. (Compl. at ¶¶ 80-94.)

11 Because 42 U.S.C. § 1983 does not provide for vicarious
12 liability, local governments "may not be sued under § 1983 for an
13 injury inflicted solely by its employees or agents." Monell, 436
14 U.S. at 694. "Instead, it is when execution of a government's
15 policy or custom, whether made by its lawmakers or by those whose
16 edicts or acts may be fairly said to represent official policy,
17 inflicts the injury that the government as an entity is
18 responsible under § 1983." Id. A Monell claim lies where "the
19 municipal action was taken with the requisite degree of
20 culpability and must demonstrate a direct causal link between the
21 municipal action and the deprivation of federal rights." Bd. of
22 Cty. Comm'rs of Bryan Cty. v. Brown, 520 U.S. 397, 406 (1997).

23 To survive a motion to dismiss a Monell claim, a
24 plaintiff must do more than simply allege that a defendant
25 "maintained or permitted an official policy, custom, or practice
26 of knowingly permitting the occurrence of the type of wrongs"
27 alleged in the complaint. See AE ex. rel. Hernandez v. Cty. of
28 Tulare, 666 F.3d 631, 637 (9th Cir. 2012). Facts regarding the

specific nature of the alleged policy, custom, or practice are required; merely stating the subject to which the policy relates (i.e., excessive force) is insufficient. See id.

Following this rule, district courts have dismissed complaints where a plaintiff alleged a single incident of unconstitutional conduct as the basis for his Monell claim. See, e.g., Wallace v. City of Santa Rosa, No. C 12-6451 MMC, 2013 WL 4675354, *2 (N.D. Cal. Aug. 30, 2013) (dismissing a Monell claim rooted in allegations of an officer's use of excessive force during a plaintiff's arrest and finding that a single incident is insufficient to support a Monell claim based on inadequate training or failure to discipline).

A. Claims Against the City of Vallejo

A municipality can be sued for "constitutional deprivations visited pursuant to governmental custom." Monell, 436 U.S. at 690. To establish liability, plaintiffs must show that (1) they were deprived of a constitutional right, (2) the municipality had a policy; (3) the policy amounted to a deliberate indifference to their constitutional right; and (4) the policy was the "moving force behind the constitutional violation." See Mabe v. San Bernardino Cty., 237 F.3d 1101, 1110-11 (9th Cir. 2001) (citing Van Ort v. Estate of Stanewich, 93 F.3d 831, 835 (9th Cir. 1996).)

Here, plaintiffs have alleged that their rights were violated by the City of Vallejo because (1) Sergeant Virgil Thomas was permitted to remain on the crime scene and photographed Eric Reason's body, (2) Vallejo police officers uninvolved in the investigation viewed Eric Reason's body under a

1 tarp, (3) the City of Vallejo issued a press release that made
2 inaccurate statements and was designed to defend Sergeant
3 Thomas's actions, and (4) Chief Williams failed to respond to
4 their complaint. (Compl. at ¶¶ 80-94.) For the reasons
5 discussed below, even assuming that the alleged conduct
6 complained of by plaintiffs amounted to a violation of
7 constitutionally protected rights, plaintiffs have failed to
8 adequately plead a Monell claim against the City of Vallejo under
9 any theory.

10 1. Unconstitutional Custom or Policy

11 For an unwritten policy or custom to form the basis of
12 a Monell claim, it must be so "persistent and widespread" that it
13 constitutes a "permanent and well settled" practice. See Monell,
14 436 U.S. at 691. In pleading such a claim, the complaint must
15 "put forth additional facts regarding the specific nature of
16 [the] alleged policy, custom, or practice." See AE ex. rel.
17 Hernandez, 666 F.3d at 637. Here, the thrust of the allegations
18 against the City of Vallejo is that (1) it allegedly allowed
19 Sergeant Thomas to corrupt the crime scene and photograph the
20 decedent, (2) it allowed uninvolved Vallejo police officers to
21 view the decedent, (3) it issued a supposedly misleading press
22 release, and (4) Vallejo Chief of Police Shawny Williams failed
23 to respond to a complaint by the Reason family. (See Compl. at
24 ¶¶ 81-85.)

25 However, plaintiffs have alleged no facts in their
26 complaint regarding an unconstitutional policy, custom or
27 practice, allegations of prior incidents, or facts which
28 demonstrate that the alleged practice was of "sufficient

1 duration, frequency, and consistency such that the alleged custom
2 or practice has become a traditional method of carrying out
3 policy.” See Harper v. Cty. Of Merced, 1:18-cv-005620-LJO-SKO,
4 2018 WL 5880786, *6 (E.D. Cal. Nov. 8, 2018). Plaintiffs’
5 allegations are therefore insufficient to state a plausible, not
6 merely possible, claim for relief. See AE ex rel. Hernandez, 666
7 F.3d at 637.

8 2. Ratification

9 The Ninth Circuit has “found municipal liability on the
10 basis of ratification when the officials involved adopted and
11 expressly approved of the acts of others who caused the
12 constitutional violation.” Trevino v. Gates, 99 F.3d 911, 920
13 (9th Cir. 1996). Ratification “generally requires more than
14 acquiescence.” Sheehan v. City and Cty. of San Francisco, 743
15 F.3d 1211, 1231 (9th Cir. 2014) (overruled on other grounds by
16 City and Cty. of San Francisco v. Sheehan, 575 U.S. 600, 1767–
17 1778 (2015)).

18 Plaintiffs’ complaint states that Vallejo Police Chief
19 Shawny Williams ratified the Vallejo police officers’ conduct by
20 failing to discipline or re-train officers following the alleged
21 corruption of the crime scene and issuance of the press release.
22 (See Compl. at ¶¶ 81–86.) The complaint does not include any
23 factual allegations regarding any approval or ratification by the
24 City of the allegedly unconstitutional actions or the basis for
25 such approval. Moreover, it is well-established that the “mere
26 failure to discipline [the officers] does not amount to
27 ratification of their allegedly unconstitutional actions.” See
28 Sheehan, 743 F.3d at 1231. The plaintiffs here have therefore

1 failed to state a cognizable claim of ratification under Monell.

2 3. Failure to Train

3 In order to state a claim for failure to train under
4 Monell, a plaintiff must show that: (1) the existing training
5 program is inadequate in relation to the tasks the particular
6 officers must perform; (2) the officials have been deliberately
7 indifferent to the rights of the persons with whom the police
8 come into contact; and (3) the inadequacy of the training
9 "actually caused the deprivation of the alleged constitutional
10 right." Merritt v. Cty. of Los Angeles, 875 F.2d 765, 770 (9th
11 Cir. 1989). "[W]hen city policymakers are on actual or
12 constructive notice that a particular omission in their training
13 program causes city employees to violate citizens' constitutional
14 rights, the city may be deemed deliberately indifferent if the
15 policymakers choose to retain that program." Connick v.
16 Thompson, 563 U.S. 51, 61 (2011.)

17 Here, plaintiffs have not provided any factual
18 allegations (1) as to how the City's officer training is
19 inadequate, (2) that the officials have been deliberately
20 indifferent to the rights of Vallejo citizens, or (3) that the
21 inadequacy of the training was what actually caused the alleged
22 deprivation of plaintiffs' constitutional rights. See Merritt,
23 875 F.2d at 770. Accordingly, plaintiffs have failed to state a
24 cognizable claim of failure to train under Monell. Because the
25 complaint fails to state a Monell claim under any theory, the
26 court will dismiss the complaint's fourth claim against the City
27 of Vallejo.

1 B. Claims Against the City of Richmond¹

2 Plaintiffs' sole allegation against the City of Richmond is
3 that the City of Richmond failed to discipline or retrain
4 Sergeant Thomas following the death of Eric Reason and permitted
5 him to return to his post. (See Compl. at ¶ 71.) Plaintiffs and
6 the City of Richmond go to great lengths to dispute whether
7 Sergeant Thomas was acting within the scope of his employment at
8 the time of the incident. (See generally Reply to City of
9 Richmond's Mot. to Dismiss); (See generally City of Richmond Mot.
10 to Dismiss.) However, the court need not decide whether Sergeant
11 Thomas acted within the scope of his employment because, even
12 assuming that Sergeant Thomas did act in his official capacity,
13 plaintiffs have failed to adequately plead a claim against the
14 City of Richmond under Monell, as discussed below.

15 1. Unconstitutional Custom or Policy

16 The thrust of the allegations against the City of
17 Richmond is that Sergeant Thomas was allowed to return to work
18 following the death of Eric Reason and was allegedly not
19 disciplined or re-trained. (See Compl. at ¶¶ 68-71.) However,
20 plaintiffs have alleged no facts in their complaint regarding an

21
22 ¹ The City of Richmond also seeks to dismiss plaintiffs'
23 sixth cause of action for wrongful death--negligence under
24 California Code of Civil Procedure §§ 377.60-377.61 because it is
25 duplicative of the seventh cause of action for negligence. (See
26 City of Richmond Mot. to Dismiss at 14.) Plaintiffs concede this
27 and seek to amend to cure this deficiency or file a notice
28 withdrawing and/or dismissing the duplicative cause of action.
 (See Pls.' Reply to City of Richmond's Mot. to Dismiss at 21
 (Docket No. 12).) Accordingly, the court will permit plaintiffs
 to cure this defect either by amending the complaint or filing a
 notice withdrawing or dismissing the duplicative cause of action.

1 unconstitutional policy, custom or practice, allegations of prior
2 incidents, or facts which demonstrate that the alleged practice
3 was of "sufficient duration, frequency, and consistency such that
4 the alleged custom or practice has become a traditional method of
5 carrying out policy." See Harper, 2018 WL 5880786, at *6.

6 Instead, plaintiffs rely solely on boilerplate conclusions of
7 customs, practices and policies related to excessive force and
8 police misconduct. (See Compl. at ¶ 72.) Plaintiffs'
9 allegations are therefore insufficient to state a plausible, not
10 merely possible, claim for relief against the City of Richmond
11 upon this theory. See AE ex rel. Hernandez, 666 F.3d at 637.

12 2. Ratification

13 Plaintiffs' complaint states that the Richmond Chief of
14 Police Bisa French ratified the Sergeant Thomas's conduct by
15 failing to discipline or re-train him following the death of Eric
16 Reason. (See Compl. at ¶¶ 81-87.) However, the complaint does
17 not include any factual allegations regarding any approval or
18 ratification by the City of the allegedly unconstitutional
19 actions or the basis for such approval. Moreover, it is well-
20 established that the "mere failure to discipline [the officers]
21 does not amount to ratification of their allegedly
22 unconstitutional actions." See Sheehan, 743 F.3d at 1231.
23 Plaintiffs have therefore failed to state a cognizable claim of
24 ratification against the City of Richmond under Monell.

25 3. Failure to Train

26 Plaintiffs have not provided any factual allegations as
27 to (1) how the City's officer training is inadequate, (2) that
28 the officials have been deliberately indifferent to the rights of

1 Richmond citizens, or (3) that the inadequacy of the training was
2 what actually caused the alleged deprivation of plaintiffs'
3 constitutional rights. See Merritt, 875 F.2d at 770.
4 Accordingly, plaintiffs have failed to state a cognizable claim
5 of failure to train under Monell. Because the complaint fails to
6 state a Monell claim under any theory, the court will dismiss the
7 complaint's third claim against the City of Richmond.

8 C. Claims Against Vallejo Chief of Police Shawny Williams
9 and Richmond Chief of Police Bisa French

10 Plaintiffs attempt to sue Chief Williams and Chief
11 French in their individual capacities under Monell, but a Monell
12 claim may be brought only against a municipality, not an
13 individual. See Guillory v. Orange Cty., 731 F.2d 1379, 1382
14 (9th Cir. 1984) ("Monell does not concern liability of
15 individuals acting under color of state law.") Monell liability
16 applies only to municipal or other local government units when a
17 plaintiff alleges unconstitutional action on the part of a
18 government entity, and "the action that is alleged to be
19 unconstitutional implements or executes a policy statement,
20 ordinance, regulation, or decision officially adopted and
21 promulgated by that body's officers." Monell, 436 U.S. at 690.

22 Therefore, Monell liability only applies to government
23 entities when employees of such entities are found to have
24 committed other constitutional violations and "a policy, practice
25 or custom of the entity can be shown to be a moving force behind
26 the violation of constitutional rights." Dougherty v. City of
27 Covina, 654 F.3d 892, 900 (9th Cir. 2011.)

28 "Although there is a general rule that parties are

1 allowed to amend their pleadings, it does not extend to cases in
2 which any amendment would be an exercise in futility, or where
3 the amended complaint would also be subject to dismissal." See
4 Steckman v. Hart Brewing, Inc., 143 F.3d 1293, 1298 (9th Cir.
5 1998) (internal citations omitted). The third and fourth claims
6 will therefore be dismissed with prejudice as against Chief
7 Williams and Chief French with prejudice because amendment of
8 these Monell claim would be futile.²


9 IT IS THEREFORE ORDERED that the City of Vallejo and
10 Vallejo Chief of Police Shawny Williams' motion to dismiss
11 plaintiffs' fourth claim under Monell, (Docket No. 6), the City
12 of Richmond's motion to dismiss plaintiffs' third claim under
13 Monell (Docket No. 8), and Richmond Chief of Police Bisa French's
14 motion to dismiss plaintiffs' third claim under Monell (Docket
15 No. 9) be, and the same hereby are, GRANTED. Plaintiffs' third
16 and fourth Monell claims against Chief French and Chief Williams
17 are dismissed with prejudice.³

19 ² Defendant City of Vallejo and Chief of Police Shawny
20 Williams requests that the court take judicial notice of the
21 security camera footage of the shooting and the fact that Chief
22 Shawny Williams joined the Vallejo Police Department on November
23 10, 2019. (Request for Judicial Notice ("City of Vallejo's
24 RJN")) (Docket No. 6-1).) The City of Richmond and Richmond
25 Chief of Police Bisa French also request that the court take
26 judicial notice of five exhibits in support of their respective
27 motions to dismiss. (See City of Richmond and Bisa French's RJN)
28 (Docket No. 16-1).) Because the facts alleged in plaintiffs'
complaint are insufficient to establish a Monell claim against
any defendant under any theory, with or without these exhibits,
the court need not consider whether to take judicial notice of
them at this stage of the proceedings.

³ The court expresses no opinion as to whether Chief
Williams and Chief French could be sued under any other theory.

1 Plaintiffs have twenty days from the date this Order is
2 signed to file an amended complaint if they can do so consistent
3 with this Order. Plaintiffs also have twenty days to file a
4 notice withdrawing and/or dismissing the duplicative sixth or
5 seventh cause of action if they opt not to cure the defect by
6 amending the complaint.

7 Dated: January 12, 2021



WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE